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Problem-based learning and international commercial dispute resolution in the Indian Ocean

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ABSTRACT

One of the primary challenges for a law lecturer is to take students beyond their own assumptions about the parameters of a subject and provide them with new opportunities for exploration and a broader vision to enhance learning. A significant feature of law as a discipline of study in higher education that has the potential to impact on the curriculum and the way in which it is taught is the academic/vocational divide. Problem-based learning (PBL) activities make classroom settings unpredictable and surprising, and learning to deal with such uncertainty prepares students for one of the most crucial aspects of professional life: the ability to make judgements in a context of uncertainty. This article analyses the integration of PBL within an LLM module on International Commercial Dispute Resolution. The logic of using PBL in this module is to ensure that the more abstract and less engaging aspects of the course are learned in relation to a close involvement with problems that are highly relevant to students' more concrete ideas of what the course is about and what competence would mean within it. The experience of the students with the PBL activities, captured in reflective narratives and anonymous questionnaires, is also discussed.

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Introduction

As the law is an integral and influential part of everyday life, it provides a rich source of materials and ideas that shape and reflect societal rules, norms and values with increasingly indistinct boundaries, drawing on other areas such as philosophy, politics, sociology and economics. This provides ample opportunities to move beyond a narrow construction of the law school curriculum to a wider consideration of the place and status of the law in society. It is within this context that the primary challenge facing a law lecturer is to take students beyond their own assumptions about the parameters of the subject and provide them with new opportunities for exploration and a broader vision to enhance learning.¹

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¹See T. Varnava and J. Webb, "Key Aspects of Teaching and Learning: Enhancing Learning in Legal Education", in H. Fry, S. Ketteridge and S. Marshall, *A Handbook for Teaching and Learning in Higher Education* (Abingdon, Routledge, 2009) at p. 363.

One of the most significant features of law as a discipline of study in higher education that has the potential to impact on the curriculum and the way in which it is taught is the academic/vocational divide.² Traditionally law was allied to training for the legal professions and it was not until the early to mid-twentieth century that it began to establish itself as an independent academic discipline.³ Consequently the discipline can sometimes appear precarious with regard to its status and focus, leading to ongoing debates and disagreements about the purpose of tertiary legal study. Academics are divided between those who feel the law school curriculum should cater to the needs of professional bodies and appreciate how it is applied in the real world and those who feel that law is an academic subject in its own right which can be studied in isolation from any vocational concerns or influences and that it is not the place of law schools to prepare students for practice. For example, some legal academics have expressed reservations with regard to the influence of professional bodies over the content of a qualifying law degree and the appropriateness of teaching skills associated with the profession within the undergraduate law degree. Others contend that there is a need to provide opportunities for “experiential learning” within the current law degree.⁴

It seems that both arguments are so vociferously stated and defended that they are each in danger of restricting the development of alternative positions that seek to draw on the strengths of both by combining academic rigour with an understanding of law in its practical context and in recognition of the fact that if students are to engage fully with law as a subject it has to be studied in all of its forms, both theoretical and applied.⁵ Regardless of such contentions, few would disagree that law schools encounter prospective lawyers at their most formative stage and offer them their first formalised introduction to the legal profession, with their primary role being to teach people to think like lawyers.⁶

Industry requirements

Shulman describes the characteristic forms of teaching and learning in a professional discipline as “signature pedagogies”, where students are instructed “to think, to perform and to act with integrity”.⁷ He remarks that while most legal education involves learning to think like a lawyer, law schools show little concern for learning to perform

²Ibid., p. 364.

³See W. Twining, *Blackstone's Tower* (London, Sweet & Maxwell, 1994), referred to in Varnava and Webb, *supra* n. 1, at p. 364.

⁴See the findings in the research project conducted by K. Clegg, *Playing Safe: Learning and Teaching in Undergraduate Law* (UKCLE, 2004) available at https://www.heacademy.ac.uk/system/files/playing_safe.pdf (accessed 1 October 2016). On the unique benefits of experiential methods of learning in the study of law, see Directions in Legal Education, “Counting the Cost of the Law Degree” (2004) available at <http://www.ukcle.ac.uk/resources/directions/previous/issue8/leader/> (accessed 1 October 2016). See also Varnava and Webb, *supra* n. 1, at p. 364. For a discussion on the failure of legal education to prepare law graduates for legal practice, see C. Hammond, “Teaching Practical Legal Problem Solving Skills: Preparing Law Students for the Realities of Legal Life” (1999) 10 *Legal Education Review* 191–207, pp. 192–193. See also K. Mack, “Integrating Procedure, ADR and Skills: New Teaching and Learning for New Dispute Resolution Processes” (1998) 9 *Legal Education Review* 83–100, at pp. 84–88. See also J.K. Eckmann, “Law School Teaching: Linking Learning with Law Practice” (2003–2004) 14 *Legal Education Review* 257–268.

⁵Varnava and Webb, *supra* n. 1 at p. 364.

⁶B.R. Henderson, “Asking the Lost Question: What Is the Purpose of Law School” (2003) 53 *Journal of Legal Education* 48 at p. 57.

⁷L.S. Shulman, “Signature Pedagogies in the Professions” (2005) 134(3) *Daedalus* 52, p. 52.

like one.⁸ Where clinical legal education does exist, it can be found on the margins, is rarely required and is usually ungraded.⁹ Pedagogies that bridge theory and practice are never simple, but once they are learned and internalised, experience suggests that one does not have to think about them, one thinks with them.¹⁰ Such signature pedagogies can make classroom settings unpredictable and surprising, and learning to deal with such uncertainty prepares students for one of the most crucial aspects of professional life: the ability to make judgements in a context of uncertainty.¹¹ They must also strike the appropriate balance between the various dimensions of practice: the intellectual, the technical and the moral.¹²

The Subject Benchmark Statement in Law represented an opportunity for the academic community to articulate the defining characteristics of the discipline and the academic qualities expected of a law student. The Subject Benchmark Statement in Law refers to bachelor's degrees with honours in law, but the author believes that the principles contained in it are also applicable at postgraduate level. It is reviewed every seven years. The most recent (third) edition of the statement, drafted by the UK Quality Assurance Agency for Higher Education as part of the UK Quality Code for Higher Education, was issued in July 2015 and "defines [the threshold i.e. minimum standard of] what can be expected of a graduate in the subject, in terms of what they might know, do and understand at the end of their studies".¹³

The statement sets out the skills and qualities of mind that a law student should possess, and that problem-based learning (PBL) fosters and helps to instil, including intellectual independence, self-management, awareness of principles and values of law and justice and ethics, knowledge and understanding of context and substantive areas of law, the ability to conduct self-directed research and work with a range of information, the ability to recognise ambiguity and deal with uncertainty in law, presentation of a reasoned choice between alternative solutions, the ability to communicate both orally and in writing and the ability to apply knowledge and understanding to offer evidenced conclusions addressing complex, actual or hypothetical problems.¹⁴ While some of these characteristics may seem relatively generic, it has been suggested that law as a discipline is particularly suited to their development, providing fertile soil for a range of pedagogical approaches.¹⁵

Both the Joint Statement on the Academic Stage of Training, issued by the Solicitors Regulation Authority and the Bar Standards Board, the two regulatory bodies for practising lawyers in England and Wales,¹⁶ and the Subject Benchmark Statement in Law emphasise the acquisition of legal knowledge. As the content in many areas of law changes rapidly, it has been suggested that an approach that enables students to learn and update their own knowledge, while developing the skills and abilities

⁸Ibid.

⁹Ibid., p. 55.

¹⁰Ibid., p. 56.

¹¹Ibid., p. 57.

¹²Ibid., p. 58.

¹³Available at <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 1 October 2016).

¹⁴See for example, J. Macfarlane and P. Boyle, "Instructional Design and Student Learning in Professional Legal Education" (1993) 4 *Legal Education Review* 63–88, pp. 85–86.

¹⁵See Varnava and Webb, *supra* n. 1, at p. 365.

¹⁶Available at <http://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page> (accessed 1 October 2016). See also Varnava and Webb, *supra* n. 1 at p. 365.

identified in the Benchmark Statement is more likely to result in an engaging and satisfying learning experience.¹⁷

PBL is also of benefit to those law students who will not pursue a career in law. Many will go on to work in industry or engage in other activities. In whatever career they choose to pursue, they will undoubtedly encounter problems to be resolved such as commercial conflict and an effective approach to resolving such problems will prove vital.¹⁸

Evolving teaching methods

Before 1870 law teaching involved the lecture/textbook method. The case method was introduced in 1870 by the Dean of Law at Harvard University, Christopher Columbus Langdell and later spread to other universities. At that time students had to participate in apprenticeships at private law firms and study at private law schools that used a traditional lecturing method. Langdell effectively integrated the practical experience attained by students during their apprenticeship and their increasing knowledge by consistent and thorough instruction, as the case method, in his view, offered fewer inconsistencies than an apprenticeship did and had greater practicality than the lecture method. This also gave law schools prestige within universities as they moved from being largely “vocational” schools where law was taught mainly by non-academic judges and practitioners to a school of science, entitled to the same respect as other schools.¹⁹

One of the key features distinguishing US from UK legal education is that in the UK a law degree is seen as a programme of general liberal education rather than as a matter of professional formation.²⁰ Teaching methods traditionally used in UK law schools have tended to reinforce passive and habitual behaviours by students in lectures.²¹ Many law academics tend to be conservative, teaching how they themselves were taught, adopting the traditional lecture approach coupled, in some instances, with the case method.²² The adoption of this conservative approach also resulted, in part, from pressure for tenure.²³

The case method adopted a scientific method style of teaching with Socratic implementation and was criticised as it did not help students understand why litigation was necessary to resolve a dispute, why settlement efforts failed or the decision-making processes of lawyers and clients.²⁴ Students were studying solutions to problems, but not the various ways to solve these problems and this is seen as the key failure of the case

¹⁷See Varnava and Webb, *supra* n. 1, at p. 365.

¹⁸See for example, Rob Batty, “Well There’s Your Problem – the Case for Using PBL to Teach Law to Business Students” (2013) 47(2) *Law Teacher* 243–260, pp. 245 and 249.

¹⁹See J.H.C. Moust, “The Problem-Based Education Approach at the Maastricht Law School” (1998) 32(1) *Law Teacher* 5, pp. 6–7. See also M. Moskovitz, “Beyond the Case Method: It’s Time to Teach with Problems” (1992) 42 *Journal of Legal Education* 241–270 at pp. 241–247.

²⁰See J. Webb and A. Boon, “Legal Education and Training in England and Wales: Back to the Future?” (2008) 58 *Journal of Legal Education* 79, p. 116. For an alternative view on the appropriateness of law schools having the primary objective of teaching students to think like lawyers, see P. Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-First Century* (Aldershot, Ashgate, 2007), p. 272.

²¹K.H. Hirokawa, “Critical Enculturation: Using Problems to Teach Law” (2009–2010) 2(1) *Drexel Law Review* 1–40, p. 7.

²²See G. Gibbs, *Twenty Terrible Reasons for Lecturing* (Birmingham, SCED Occasional Paper No. 8, 1981), section 1.6; see also D. Boud and G. Felletti [sic] (eds), *The Challenge of Problem-Based Learning* (London, Kogan Page, 1991) p. 54, as referred to in R. Havelock, “Law Studies and Active Learning: Friends Not Foes?” (2013) 47(3) *Law Teacher* 382–403, p. 383. See also P.I. Orji, “Problem-based Approach in Property Law – a University’s Strategy in Focus” (2015) 49(3) *Law Teacher* 372–387, p. 380.

²³See Moskovitz, *supra* n. 19, p. 241.

²⁴Hirokawa, *supra* n. 21, pp. 3 and 6–11.

method: it does not teach students to develop solutions of their own. While the case method teaches students an understanding of the doctrines, it does not teach them how to apply these doctrines to new situations.²⁵ The move towards PBL also resulted from an appreciation that the practice of law is closer to being an art than a science.²⁶

Problem-solving

The concept that practical experience is a more effective means of learning for lawyers has been championed for some time by many jurists and scholars.²⁷ They emphasise clinical legal education that favours teaching through the experiences of law practice, where students' experiential learning, or learning by doing, is focused on the development of lawyering skills.²⁸ Problem-solving or the problem method is a learning and teaching methodology that has developed in response to the shortcomings of traditional teaching approaches. It involves the presentation of a problem scenario to students that requires them to research the relevant law and produce a solution, followed by a class discussion about the "answer". PBL employs some of the same attributes as the problem method but the focus is on the learning process rather than knowledge acquisition, where students learn not only knowledge but the important skills they need to deal with authentic problems "in general and in their discipline".²⁹ The problem method often supplements the case method, providing complex hypotheticals that test the application of rules embedded in decided cases, often designed to be used in a medium to large class setting with the lecturer leading the discussion of the assigned reading material.³⁰ PBL, in contrast, may be implemented in many and varied ways.³¹ It can adopt, for example, a tutorial structure where students work on the problem at their own pace and pursue avenues of enquiry as determined by their own thought processes.³² It can follow an open discovery³³ model or a guided discovery model where the learning outcomes can be largely predetermined.³⁴

²⁵See Moust, *supra* n. 19, pp. 7–8.

²⁶See Moskovitz, *supra* n. 19, p. 265.

²⁷For example see J. Frank, "Why Not a Clinical Lawyer-School?" (1933) 81 *University of Pennsylvania Law Review* 907, pp. 914–923, referred to in Hirokawa, *supra* n. 21, p. 2.

²⁸For a discussion on the promotion of experiential learning by the Legal Realists, see Thomas D. Morgan, "Use of the Problem Method for Teaching Legal Ethics" (1998) 39 *William & Mary Law Review* 409, pp. 409–410 referred to in Hirokawa, *supra* n. 21, p. 2.

²⁹M. Kiley, G. Mullins, R. Peterson and T. Rogers, "Leap into Problem-based Learning", Centre for Learning & Professional Development, University of Adelaide, p. 15, referred to in I. McCall, "Online Enhanced Problem-based Learning: Assessing a Blended Learning Framework" (2010) 44(1) *Law Teacher* 42–58 at p. 44.

³⁰See Moskovitz, *supra* n. 19, p. 261. For an interesting discussion on the emergence of the problem method, see G.L. Ogden, "The Problem Method in Legal Education" (1984) 34 *Journal of Legal Education* 654–673. For an interesting article on the application of a problem method in the civil law context in Germany, and its potential application in common law jurisdictions and in China, see Lutz-Christian Wolff, "Structured Problem Solving: German Methodology from a Comparative Perspective" (2003–2004) 14 *Legal Education Review* 19–51.

³¹M. Prince, "Does Active Learning Work? A Review of the Research" (2004) 93 *Journal of Engineering Education* 223, pp. 224 and 229.

³²Barbara J. Flagg, "Experimenting with Problem-Based Learning in Constitutional Law" (2002) 10 *Washington University Journal of Law & Policy* 101–160 at pp. 102–103. For a discussion on the confusion between PBL and other teaching methods, see M. Tzannes, "Problem Based Learning in Legal Education: Intentionally Overlooked or Merely Misunderstood" (1997) 31(2) *Law Teacher* 180–197, pp. 181–182.

³³For a discussion on discovery in the context of PBL, see D. Boud and G. Feletti, *The Challenge of Problem Based Learning* (2nd ed., London, Kogan Page, 1997), chapter 4.

³⁴R. Grimes, "Delivering Legal Education through an Integrated Problem-based Learning Model – the Nuts and Bolts" (2014) 21 *International Journal of Clinical Legal Education* 228–256 at p. 256.

For example, York Law School adopts a model based on established practice in many medical schools.³⁵ It involves 10 steps that each group of students follows. First, they read and clarify the problem, to determine whether any terms or words need to be explained or researched. Second, they identify the relevant parties and their interests. Third, they set out the chronology of events in the scenario to focus minds on the link between fact and law and to ensure that no significant aspect is missed. Fourth, each group engages in mind-mapping what the problem is about, including possible “learning” issues, looking in the broadest sense at what the scenario may encompass and to consider law in a non-compartmentalised way. Suggestions are recorded at this stage that may be ignored later if deemed irrelevant. Fifth, each group summarises and gives the problem a name. This is viewed as part initial analysis and part fun, a break from the analysis and something students enjoy. It is also a means for recalling the problem when similar issues are discussed at a later stage. Sixth, each group organises themes, manipulating all of the ideas produced by the mapping activity into research themes, usually by using a *Smartboard* where the issues identified can be saved and then physically moved around the board to group themes with commonalities. Seventh, each group defines learning outcomes from themes. Once the themes have been identified and are clearly stated the learning outcomes should follow with one to a theme or more than one in the case of broadly expressed themes. Four to five outcomes are expected and tutors are present to ensure that the expected learning outcomes, which were previously defined at the curriculum design stage, are broadly identified by the group. Eighth, at the end of the initial PBL session all group members document the learning outcomes and consequential research tasks and in the four to five days before the interim session each member is expected to carry out the necessary research. Ninth, they share results. This is a two-stage process, where the group members report back on their research experience, their management of sources identified and any overt “findings” at the interim meeting and then on those and any further results at the end of the group’s cycle meeting with their designated tutor. Tenth, group members, guided by their tutor, go through each outcome to ensure that the “answers” given are appropriate. While it is acknowledged that this approach is not an exercise in problem-solving, although variants of PBL may include an element of this, this form of PBL is more problem and issue analysis.³⁶

The motivation to move towards PBL in institutions such as York Law School stemmed from concerns about the efficacy of traditional teaching approaches and the consequent failure to meet the subject matter mastery that students are capable of.³⁷ The case method involved cases being discussed in class with the lecturer questioning the students about the facts, the decision and the reasoning of the cases in order to improve the students’ reasoning skills. Views vary on the effectiveness of this approach. It has been suggested that it turned out better lawyers, as interaction with a Socratic teacher sharpened students’ minds, helping them to think on their feet, to express themselves, to read cases, gain a deep understanding of the rules and the rationale for their adoption and similar lawyering skills.³⁸ Conversely, experience at some institutions suggests that this approach resulted in significant

³⁵*Ibid.*

³⁶*Ibid.* at pp. 5–6.

³⁷Flagg, *supra* n. 32, p. 104.

³⁸See Moskowitz, *supra* n. 19, p. 244.

embarrassment for many participants that adversely affected their university experience.³⁹ Regardless of such varying conjecture, there was a tendency by students to over-focus on substance and under-focus on process.⁴⁰

Lawyers are primarily problem-solvers, and the primary task of law school should be to equip students with the tools they need to solve problems.⁴¹ The paradox of learning a new competence, according to Schon, is that the student cannot at first understand what he needs to learn, can learn it only by educating himself, and can educate himself only by beginning to do what he cannot understand.⁴² Hence students work on the problem in order to identify, and search for, the knowledge that they need to obtain to approach the problem. This turns the normal approach to problem-solving in tertiary educational programmes on its head, as it is assumed that students must attain the knowledge required to approach a problem before they can work on the problem. In a PBL context, the knowledge arises from work on the problem,⁴³ as distinct from being a prerequisite to solving the problem.⁴⁴ While problem-solving may be an expected part of the programme of study, it may not be an essential or relevant component.⁴⁵ It has been suggested that if PBL enhances problem-solving, this may be through improving accessibility to knowledge rather than improving the process itself.⁴⁶

For the purposes of the exercise that the author used with the class, PBL involved confronting students with materials and facts underlying a problem from which they had to work out the nature of the problem and an appropriate solution, without much prior instruction in the required knowledge to solve it.⁴⁷ Hence problems, tasks and unexpected situations formed the starting point of learning. As PBL is a methodology that may or may not have practical application, the focus of such learning will be determined by the level of the study. As the PBL exercise was aimed at postgraduate law students, it was appropriate that it should involve the types of problems that are typically encountered in professional life.⁴⁸ The problems themselves become the stimulus and reason for learning and cross boundaries in terms of legal topics that require students to distinguish between different concepts.⁴⁹

As noted above, traditionally in law, information is provided to students in lectures and students are then expected to use the information to solve problems that are then discussed in tutorials. In PBL the problem comes first and students both define the problem and gather the required information in order to explore it. Students work in self-directed groups taking an active and systematic approach to defining and

³⁹See Eckmann, *supra* n. 4, at p. 260.

⁴⁰R.A.B. Bush, "Using Process Observation to Teach Alternative Dispute Resolution: Alternatives to Simulation" (1987) 37(1) *Journal of Legal Education* 46, at pp. 48, 55, referred to in Mack *supra* n. 4, at p. 99.

⁴¹E. Garrett, "The Socratic Method" (1998) *The Green Bag*. Available at http://www.law.uchicago.edu/socrates/soc_article.html (accessed 1 October 2016).

⁴²Schon (1987) referred to in A. Bone and K. Hinett, "Developing Reflective Practice. Assessment for Learning: Guide for Law Teachers", available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/reflective/> (accessed 1 October 2016).

⁴³Bob Ross in Boud and Feletti, *supra* n. 33, chapter 3.

⁴⁴B. Ross, "Towards a Framework for Problem Based Curricula", in Boud and Feletti, *supra* n. 33, chapter 3.

⁴⁵G. Maudsley, "Do We All Mean the Same Thing by 'Problem-Based Learning'? A Review of the Concepts and a Formulation of the Ground Rules" (1999) 74(2) *Academic Medicine* 178–185.

⁴⁶*Ibid.* at p. 183.

⁴⁷See Varnava and Webb, *supra* n. 1, at p. 367.

⁴⁸See P. Ramsden, *Learning to Teach in Higher Education* (London, Routledge, 2003), p. 141.

⁴⁹See, for example, R. Grimes, "Delivering Legal Education through an Integrated Problem-based Learning Model – the Nuts and Bolts" (2014) 21 *International Journal of Clinical Legal Education* 228–256 at p. 232.

“resolving” the problem. The process effectively involves team-based exploration and synthesis combined with individual research and analysis,⁵⁰ with students being the primary agents for learning.⁵¹

This approach has been particularly influential in medical education where concerns about “taxing the memory but not the intellect” have resulted in medical schools throughout the USA, UK, Canada and Australia adopting PBL approaches in their learning and teaching.⁵² It has since been adopted in fields such as engineering, architecture, nursing and management.⁵³ More recently it has been adopted in some UK law schools, as demonstrated by the model employed in York Law School discussed above. Since its inception, York Law School used a PBL model across all foundation and most optional modules at both LLB and LLM levels.⁵⁴ PBL has also been introduced into individual law modules at other institutions⁵⁵ and has also been employed to teach law to non-law students.⁵⁶ It has also been integrated into “blended learning”: a mix of face-to-face and online teaching methods.⁵⁷

The logic of adopting PBL in an LLM module on International Commercial Dispute Resolution, discussed further below, is that the more abstract and less engaging aspects of the course are learned in relation to a close involvement with problems that are highly relevant to students’ more concrete ideas of what the course is about and what competence would mean within it. In the PBL exercise students were required to identify the nature of the problem, collect the information required to tackle it and synthesise a solution,⁵⁸ with knowledge, skills and professional attitudes being simultaneously addressed.⁵⁹ Perhaps one of the more extreme descriptions of PBL vis-à-vis traditional teaching methods characterises PBL as just the opposite of “technocratic training seemingly calculated to knock the moral stuffing out of anyone”.⁶⁰ The PBL exercise created the environment within which the students

⁵⁰See Varnava and Webb, *supra* n. 1, at p. 368.

⁵¹Y.J. Wong, “Harnessing the Potential of Problem-based Learning in Legal Education” (2003) 37(2) *Law Teacher* 157–173, p. 168.

⁵²See GMC, 1994:5 as referred to in G. Light and R. Cox, *Learning and Teaching in Higher Education: The Reflective Professional* (London, Sage, 2001) p. 176.

⁵³See Batty, *supra* n. 18, at p. 249.

⁵⁴See Grimes, *supra* n. 34, pp. 1–26, for an overview of how the programmes are structured.

⁵⁵See for example J. Clough and G.W. Shorter, “Evaluating the Effectiveness of Problem-based Learning as a Method of Engaging Year One Law Students” (2015) 49(3) *Law Teacher* 277–302 at p. 282; Havelock, *supra* n. 22, pp. 382–403; Orji, *supra* n. 22, pp. 372–387; Hirokawa, *supra* n. 21, pp. 1–40; Fiona Martin, “Using a Modified Problem Based Learning Approach to Motivate and Enhance Student Learning of Taxation Law” (2003) 37(1) *Law Teacher* 55–75; Wong, *supra* n. 51, pp. 157–173; V. Nagarajan, “Designing Learning Strategies for Competition Law – Finding a Place for Context and Problem Based Learning” (2002) 13 *Legal Education Review* 1–19; Flagg, *supra* n. 32, pp. 101–160; Moust, *supra* n. 19, pp. 5–36; J. Macfarlane and J. Manwaring, “Using Problem-Based Learning to Teach First Year Contracts” (1998) 16(2) *Journal of Professional Legal Education* 271–298; Mack, *supra* n. 4, pp. 83–100; C. Sylvester, J. Hall and E. Hall, “Problem-based Learning and Clinical Legal Education: What Can Clinical Educators Learn from PBL?” (2004) 4 *International Journal of Clinical Legal Education* 39–63; R.M. Berry, “Teaching Health Law” (2011) 39 *Journal of Law, Medicine and Ethics* 694–703.

⁵⁶See Batty, *supra* n. 18, pp. 243–260.

⁵⁷See McCall, *supra* n. 29, pp. 42–58. See also F. Martin, “Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem” (2003–2004) 14 *Legal Education Review* 77–92.

⁵⁸Ramsden, *supra* n. 48.

⁵⁹*Ibid.*

⁶⁰See W.W. Pue, “Educating the Total Jurist?” (2005) 8 *Legal Ethics* 208, p. 220, referred to in Clark D. Cunningham, “How Can We Give up Our Child? A Practice-based Approach to Teaching Legal Ethics” (2008) 42(3) *Law Teacher* 312–328, p. 328.

involved could think differently about commercial conflict and the alternative means through which such conflict can be resolved.

The use of the word “problem” in PBL has proved confusing for some users, as the use of the word suggests a solution, which is not the primary point of PBL. Consequently, some have used alternative terms such as concept, enquiry/inquiry, theme or context-based learning.⁶¹

PBL courses are designed around real-life problems.⁶² One of the central features of PBL is that students are not expected to find a “right” answer as there may not be one.⁶³ This helps students to appreciate that the law can be unclear and indeterminate, both a creator and a product of the social and economic conditions within which it is practised.⁶⁴ PBL also reflects how lawyers work in practice as clients come to lawyers with problems to be resolved, not advice on the law in the abstract.⁶⁵

As law is very content heavy, the traditional teaching of it can instil a surface approach to learning, with insufficient time to reflect on, question and analyse what is being taught.⁶⁶ There is a significant body of evidence that the use of PBL in such courses increases the use of deep learning approaches, improves the retention of information and develops student independence and motivation.⁶⁷ This includes studies on the capacity of PBL to increase the problem-solving abilities of surface learners with low level cognitive skills and weak problem-solving strategies and the capacity of the process to encourage the development of a deep approach to learning that promotes effective problem-solving.⁶⁸

PBL can assist students to cope with the course content and analytically apply it to problems while developing problem-solving skills, self-directed learning skills and team-working skills. As PBL requires that knowledge is something that learners construct for themselves, research has shown that students learn more effectively when their prior learning is taken into consideration, where they use and acquire knowledge already attained to contextualise and embed new learning.⁶⁹ PBL also enables students to be partners in or drivers of the learning process rather than simply recipients of it, with the tutor playing a facilitative role, allowing students to explore a range of avenues rather than prescribing a specific path.⁷⁰ Hence PBL can be characterised as part methodology and part philosophy and even culture.

⁶¹See R. MacDonald and M. Savin-Baden, “A Briefing on Assessment in Problem Based Learning”, LTSN Generic Centre Assessment Series No. 13, (2004), p. 2.

⁶²See Light and Cox, *supra* n. 52, p. 175.

⁶³See Varnava and Webb, *supra* n. 1, at p. 368.

⁶⁴See Varnava and Webb, *supra* n. 1, at p. 370. The Benchmark Statement in Law also suggests that such factors should be reflected in the curriculum, available at <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 1 October 2016) at p. 6.

⁶⁵See Havelock, *supra* n. 22, p. 390. See also C.E. Hmelo-Silver, “Problem-Based Learning: What and How Do Students Learn” (2004) 16(3) *Educational Psychology Review* 235–266, p. 237.

⁶⁶See for example J. Biggs, *Teaching for Quality Learning at University* (Buckingham, SRHE and Open University Press, 2003), pp. 11–18. See also H. Fry, S. Ketteridge and S. Marshall (eds), *A Handbook for Teaching and Learning in Higher Education: Enhancing Academic Practice* (Abingdon, Routledge, 2008), pp. 369–370.

⁶⁷Ramsden, *supra* n. 48, pp. 39–61 and 141. See also Wong, *supra* n. 51, pp. 157–173.

⁶⁸See generally Paula Baron, “Deep and Surface Learning: Can Teachers Really Control Student Approaches to Learning in Law?” (2002) 36(2) *Law Teacher* 123–139.

⁶⁹Ramsden, *supra* n. 48, pp. 19–38.

⁷⁰See Varnava and Webb, *supra* n. 1, at p. 370. On the challenges of introducing PBL see Varnava and Webb, *supra* n. 1, at pp. 370–371.

The class profile

The participating class that completed the PBL exercise comprised 28 students who were studying a module on International Commercial Dispute Resolution as part of the first full-time commercial law master's programme on the island of Mauritius.⁷¹ In terms of gender profile, 57.14% of the class were male (16 students), and 42.86% of the class were female (12 students). The age profile of the class ranged from 22 years up to 71 years, with a mean age of 28.39 years. In terms of ethnicity, 92.85% of the class (26 students) described themselves as Mauritian, 3.57% of the class (one student) described herself as British/Mauritian and a further 3.57% of the class (one student) described herself as being from mainland Africa. Regarding work/study, 28.57% of the class (eight students) described themselves as full-time students, while 17.86% of the class (five students) said that they worked in the legal profession. The rest of the class worked in varied professions from journalism to civil service administration. Seventy-five per cent of the class (21 students) had studied law at undergraduate level in some form, whether as a full law degree or as law modules within a course of another discipline.

Mixed method

A mixed method research approach was adopted to capture the experience of participants with the PBL exercise.⁷² The quantitative data was collated from anonymous questionnaires.⁷³ The questionnaires were designed to elicit the information that the author wanted to glean from participants. This included the class profile, their experience with PBL and dispute resolution processes and the effectiveness of the exercise in developing relevant skills.

The more salient points gleaned from the qualitative research contained in students' reflective narratives are discussed under the relevant headings below. A majority of the class, 53.57% (15 students), said that they had never been involved in a PBL exercise before. Those who had, 46.43% of the class (13 students), experienced PBL when studying at undergraduate, postgraduate or professional level in various disciplines including finance, psychology and law in both UK and Mauritian institutions.

The problem process

As it was the first time that PBL had been used as an educational method with this class, or indeed at the Mauritius campus in any school, the author believed it was appropriate to introduce it as an exercise over a three-week period, rather than as a more comprehensive part of the curriculum, as occurs in institutions such as York Law School.⁷⁴ Even when implemented in a short intervention-type context or partially,

⁷¹An overview of the Middlesex University Mauritius Branch Campus LLM programme is available at <http://www.middlesex.mu/courses/postgraduate/llm-international-business-law> (accessed 1 October 2016).

⁷²See J.C. Greene, "Is Mixed Methods Social Inquiry a Distinctive Methodology?" (2008) 2 *Journal of Mixed Methods Research* 7. See generally also J.C. Greene, *Mixed Methods in Social Inquiry* (San Francisco, CA, Jossey-Bass, 2007) and John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (4th ed., California, Sage Publications, 2013).

⁷³See S.D. Brookfield, "Critical Incidence Questionnaire", in *Becoming a Critically Reflective Teacher* (San Francisco, CA, Jossey-Bass, 1995), Ch. 6, referred to in Havelock, *supra* n. 22, p. 393.

⁷⁴For a discussion on the type of PBL that Boud and Feletti call problem-based curricula, where students work on the problem as part of the course, see Boud and Feletti, *supra* n. 33, p. 29.

PBL can promote deep learning or assist in narrowing the gap between academic law and law as practised.⁷⁵ Indeed, various teaching methods adopted as part of a law school curriculum need not be seen as fundamentally incompatible.⁷⁶ It was a pilot exercise that the author believes will, in light of the student experience discussed below, be incorporated in a more comprehensive way in future in the law school.

The class was divided into six groups, with five groups comprising five students and one group comprising six students.⁷⁷ As noted above, PBL may be implemented in many and varied ways.⁷⁸ However, smaller groups are generally advocated.⁷⁹ Many law students see the study of law in an individual, idiosyncratic way, and group work for such students can prove, initially at least, quite challenging.⁸⁰ The logic of putting students into teams in PBL activities is that in life individuals invariably have to work in teams and there is little in the educational system that equips students for this. Investment in team learning should be a vital component of higher education and PBL enhances this goal.⁸¹

While each group took ownership of the problem, the author was available to facilitate. Experience with PBL suggests that tutors often have a greater difficulty than students in adapting to PBL. For example, it can seem counter-intuitive for some tutors not to provide the answers to students. Consequently it was important that the author remained mindful of his role in the process as “facilitator” rather than “expert”.⁸² This was also important in light of the impact of the author’s role as facilitator in the process as the understanding and skills of the facilitator can amount to an “unplanned variable”, which can have a potent effect on the quality of PBL.⁸³

Each group was organised in order to ensure that it reflected the ethnic, gender and age profile of the class. Student composition within a Master’s level law class can have a significant impact on designing learning strategies,⁸⁴ and proponents of diversity hold that differences among group members give rise to varied ideas, perspectives, knowledge, and skills that can improve their ability to solve problems and accomplish their work.⁸⁵

The groups met for three two-hour sessions during class time when the author was present. While some of the members of some groups may have been more committed

⁷⁵See M. Liddle, “Student Attitudes towards Problem-Based Learning in Law” (2000) 11(2) *Journal on Excellence in College Teaching* 163–190 at p. 187 and Havelock, *supra* n. 22, p. 390.

⁷⁶See Hirokawa, *supra* n. 21, p. 40.

⁷⁷For a discussion on the number of students that comprise an optimal group, see P. Race and S. Brown, “Inspiring Learning about Teaching and Assessment”, *The ILTA Guide* (York, Institute of Learning and Teaching, 2001) at p. 9. Available at <http://www.guardian.co.uk/education/2001/dec/18/careers.highereducation> (accessed 1 October 2016).

⁷⁸M. Prince, “Does Active Learning Work? A Review of the Research” (2004) 93 *Journal of Engineering Education* 223, pp. 224 and 229.

⁷⁹See Moust, *supra* n. 19, p. 16. For a discussion on the benefits of small group learning in PBL see J. Macfarlane and P. Boyle, “Instructional Design and Student Learning in Professional Legal Education” (1993) 4 *Legal Education Review* 63–88, p. 68.

⁸⁰On the challenges that can be faced and approaches that can prove successful in response to them see D.H. Evensen, “To Group or Not to Group: Students’ Perceptions of Collaborative Learning Activities in Law School” (2003–2004) 28 *Southern Illinois University Law Journal* 343 at p. 392.

⁸¹See MacDonald and Savin-Baden, *supra* n. 61, p. 3.

⁸²See MacDonald and Savin-Baden, *supra* n. 61, p. 4. See also Hirokawa, *supra* n. 21, p. 16.

⁸³See H.S. Barrows, “A Taxonomy of Problem-Based Learning Methods” (1986) 20 *Medical Education* 481–486 at p. 485. See also Boud and Feletti, *supra* n. 33 at p. 33.

⁸⁴See Nagarajan, *supra* n. 55, pp. 8–10.

⁸⁵See Jeffrey T. Polzer, Laurie P. Milton and William B. Swann, “Capitalizing on Diversity: Interpersonal Congruence in Small Work Groups” (2002) 47(2) *Administrative Science Quarterly* 296–324 at p. 296.

than others, this is very much part of the “real-world” experience that PBL aims to introduce students to and no doubt proves to be an important part of the learning experience. Indeed, group work in a PBL context always carries some risk of unfairness.⁸⁶ The groups were also encouraged to meet privately in their own time if the discussion and resolution of the problem were to take the group more time. Meeting privately in this way is also a means through which students may participate in a low risk setting and this is a major way in which PBL diverges from the traditional Socratic/case method of teaching, and research suggests that this approach should assist in enhancing student self-confidence and interest in the subject.⁸⁷

The problem given to students involved a dispute between business parties. After identifying the issues in the dispute, students were required to address the type (or types) of dispute resolution process(es) that could be applied to resolve the dispute, and ultimately what the outcome may be. Students were expected to draw on prior knowledge that they would have gleaned in undergraduate law subjects such as tort, contract and equity in order to define the legal limits of the various dispute resolution processes, and the consequent limits on any outcome that may result. Non-law graduates exceptionally admitted on to the programme as a result of possessing sufficient relevant industry experience were required to complete an Introduction to Law course that covered similar elementary legal themes.⁸⁸

While the module deals primarily with litigation and arbitration, the class received an overview one-hour lecture covering the different forms of dispute resolution processes, including mediation⁸⁹ and arbitration, processes that business parties are encouraged to engage in as an alternative to resolving their differences in court. Such processes have gained significant prominence in the UK in the past 20 years.⁹⁰ The lecture also covered the relevant considerations in determining the appropriate form of process (or processes) to be applied. This may be referred to as a “hybrid method”, with PBL being used in addition to the traditional teaching approach.⁹¹

As noted above, PBL does not refer to a specific educational method, and can have different meanings depending on the design of the educational method employed and the skills of the teacher. The variables can produce wide variations in quality and in the educational objectives that can be achieved.⁹² While there are various ways to implement PBL, the common element involves learning by doing as PBL places students in an active role as problem-solvers.⁹³ The exercise was aided by the fact that 68.86% of the class (19 students) had practical experience with litigation or an alternative dispute resolution (ADR) process.

The introduction of PBL can be resource intensive and consequently it is more palatable and viable to integrate it as part of an established module. Some puritan PBL

⁸⁶Flagg, *supra* n. 32, p. 135.

⁸⁷See Hirokawa, *supra* n. 21, pp. 3, 36.

⁸⁸See also Stephen Nathanson, “The Role of Problem Solving in Legal Education” (1989) 39 *Journal of Legal Education* 167–183 at pp. 182–183.

⁸⁹For a detailed description and definition of commercial mediation see the definition provided by the Centre for Effective Dispute Resolution, the primary provider of commercial mediation training and accreditation globally, available at www.cedr.com/?location=/news/archive/20041101.htm (accessed 1 October 2016).

⁹⁰See Jonathan Warne, *International Commercial Dispute Resolution* (Haywards Heath, Tottel, 2010) at p. 256.

⁹¹See for example, Wong, *supra* n. 51, p. 169.

⁹²For further discussion, see H.S. Barrows, “A Taxonomy of Problem-Based Learning Methods” (1986) 20 *Medical Education* 481–486.

⁹³See Hirokawa, *supra* n. 21, p. 2.

commentators have suggested that the term “problem methods” should be used when integrating it in this way as it is not a PBL course in the strict meaning of the term.⁹⁴ It was originally suggested that it is a purely PBL method only if it exposes students directly to a problem from the outset, without prior exposure to any background information. However, consistent with the comments above, PBL can be viewed as incorporating a range of PBL options.⁹⁵

The author was also aware that introducing a PBL exercise would be placing demands on some students unlike the demands these students were accustomed to in their previous educational experiences and would consequently result in a degree of culture shock. This is similar to the experience that students have had with PBL in Hong Kong.⁹⁶ Consequently, in a context where postgraduate students were experiencing PBL for the first time, the author believed it was best that the PBL exercise be used as part of a suitable mix of teaching methods.⁹⁷ Experience suggests that this can also promote a “deep approach” to learning where the mix of methods considers the individual interests, needs and abilities of each individual student.⁹⁸

Students were comprehensively orally briefed about the PBL exercise to ensure that they understood the process and their role in it in order to enhance student motivation.⁹⁹ They were also informed of the rationale as to why PBL was being employed in order to encourage full participation and commitment to the process.¹⁰⁰ Such “scaffolding” support makes the exercise more accessible and manageable for students.¹⁰¹

In an effort to see the problem from different perspectives, the participants were encouraged to role play, taking turns at playing the role of the lawyers for each of the parties and the independent third party, whether as judge, arbitrator, mediator or conciliator.¹⁰²

The initial problem¹⁰³ was provided in the first session. During the first session as the groups were discussing the problem, the author ensured that the groups were aware that he was available to provide feedback on any queries that they had regarding the exercise. The author also checked with each of the groups to ensure they were clear on what the exercise required of them. This immediate feedback was important in supporting learning as any misconceived ideas could be corrected instantly.¹⁰⁴ Interim feedback is critically important to ensure that students can correct

⁹⁴See Havelock, *supra* n. 22, p. 389.

⁹⁵See Flagg, *supra* n. 32, p. 134.

⁹⁶See Macfarlane and Boyle, *supra* n. 79, p. 71. See also the comments of one of the students when discussing the reflective narratives below, that reveal a similar experience in Mauritius in light of the inexperience of some students with the PBL process at undergraduate level.

⁹⁷See Ogden, *supra* n. 30, p. 666.

⁹⁸M. Danov, “Teaching International Commercial Arbitration at Postgraduate Level – Techniques for Enhancing Students’ Learning” (2011) 45(1) *Law Teacher* 101–113.

⁹⁹See M. Eggert, *The Motivation Pocketbook* (Alresford, Alresford Press Limited, 1999), as referred to in Clough and Shorter, *supra* n. 55, p. 282.

¹⁰⁰See P. Race, *The Lecturer’s Toolkit: A Practical Guide to Learning, Teaching & Assessment* (2nd ed., Abingdon, RoutledgeFalmer, 2001) as referred to in Clough and Shorter, *supra* n. 55, p. 282.

¹⁰¹Batty, *supra* n. 18, at p. 250.

¹⁰²Mack, *supra* n. 4, at pp. 97–98; see Moskovitz, *supra* n. 19, pp. 250–251 and 267. See the comments on the adoption of this approach by the group members in the excerpts from the reflective narratives below.

¹⁰³For a discussion on the elements to consider in problem selection in PBL, see Boud and Feletti, *supra* n. 33, pp. 30–31.

¹⁰⁴See Orji, *supra* n. 22, p. 382.

errors during the process.¹⁰⁵ Other than interventions such as this to provide clarification on what the exercise involved, the author did not approach any of the groups or get involved in their discussions unless requested by them to do so for clarification purposes.

In the second session, the author introduced further information that revealed background context about both parties' respective interests. Students spent the rest of that session and the third and final session discussing the problem in light of the additional issues and were, as mentioned, encouraged to meet in their own time to attempt to find a resolution to the problem if they believed they needed more time to reflect on the impact that this additional information had on the dispute resolution process(es) to be employed.

Student perceptions of the exercise

In all, 85.71% of the class (24 students) said that they enjoyed the PBL exercise more than standard lectures, 71.43% of the class (20 students) believed that the PBL exercise was more realistic than standard lectures and 92.86% of the class (26 students) believed that it made them more interested in the subject.

Despite my presence in the class throughout the exercise and my willingness to respond to student queries regarding the exercise, a majority, 57% of the class (16 students) said that they would have liked more involvement from the facilitator. However, despite this perceived weakness, 96.43% of the class (27 students) felt engaged during the PBL exercise and 75% of the class (21 students) believed that the PBL exercise should be a compulsory part of the module. Also, 78.57% of the class (22 students) said that they would prefer it if more classes were taught using PBL in the International Commercial Dispute Resolution module and 89.29% of the class (25 students) said that they believed that PBL should be used in more classes in other modules on the master's law programme.

Assessment

It has been suggested that experiences that enable students to self-assess and articulate their areas of strength and areas that require further attention are vital to their academic growth.¹⁰⁶ Preparation for lifelong learning at work necessitates an education that fosters curiosity and the capacity to manage one's own learning agenda.¹⁰⁷ Employers and professional groups are placing expectations on institutions to deliver graduates that can more effectively cope with the world of work and students are beginning to realise that they can have considerable influence when they are contributing a greater proportion of university budgets.¹⁰⁸ Employers say that

¹⁰⁵See Flagg, *supra* n. 32, p. 139.

¹⁰⁶See N.J. Bella, *Reflective Analysis of Student Work: Improving Teaching Through Collaboration* (Thousand Oaks, CA, Corwin Press, 2004), p. 3.

¹⁰⁷See D. Stern and G.L. Huber (eds), *Active Learning for Students and Teachers* (New York, Peter Lang, 1997), p. 13.

¹⁰⁸Boud in Bryan and Clegg (2006) referred to in K. Clegg, "Introduction to Assessment in Legal Education", UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/introduction/> (accessed 1 October 2016). See also A. Bone and K. Hinett, "The Future of Assessment in Legal Education? Assessment for Learning: Guide for Law Teachers", UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/future/> (accessed 1 October 2016).

they want workers who can take the initiative and solve problems.¹⁰⁹ Assessment is a critically important aspect of academic work.¹¹⁰ Designing appropriate assessment regimes and methodologies for legal practice courses which synergise with the objectives and outcomes of the learning experience will prove critical in responding to the needs of both employers and students.¹¹¹

As PBL allows learning to occur in a practice-based or professional context where possible, assessment should reflect this characteristic rather than merely testing for the acquisition of knowledge. This is one of the chief difficulties that have arisen with the assessment of PBL programmes, as many people retain the assessment methods they used in their traditional approaches resulting in a misalignment between their objectives and student learning outcomes, the learning and teaching methods adopted and the assessment of student learning.¹¹² When assessing PBL it is essential to ensure alignment between the objectives and student learning outcomes of the course, the learning and teaching methods adopted and the assessment of learning: strategies, methods and criteria.¹¹³

It is important that assessment criteria are clear and that students have a clear understanding of what is expected in order to complete the exercise successfully. The criteria used were: first, how did the student make a contribution to the group in terms of identifying the issues in the dispute and the selection of the appropriate dispute resolution process; second, when the process was selected how did the student assist in determining what the outcome of that process may be; and third, upon reflection how does the student view their contribution and critically, what have they learned from the process, including how would they approach a similar situation in future.

In PBL one is interested in assessing the student's ability to perform in a professional context, to recognise their need to acquire new knowledge and skills and to see learning holistically rather than atomistically. Assessment primarily needs to focus on how students integrate the whole learning process, including assessment, as distinct from what has actually been learned.¹¹⁴ Assessment reveals whether the students have made an effort to develop their reasoning skills, where the process of discovering a solution is more important than the solution itself.¹¹⁵

Reflective narratives as an assessment tool

It is suggested that in order to learn from their experiences students should be able to loop back and re-examine the process involved in the task, in addition to the assumptions embedded in those processes such as problem analysis, research and

¹⁰⁹See Stern and Huber, *supra* n. 107, p. 13. See also Martin, *supra* n. 55, pp. 58–59.

¹¹⁰Race, Brown and Smith as referred to in R. East, "Effective Assessment Strategies in Law", UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/effective/> (accessed 1 October 2016).

¹¹¹See C. Sherrin, "The Essential Synergy between Assessment and Learning in Skills-based Legal Practice Courses", UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/sherrin/> (accessed 1 October 2016).

¹¹²See MacDonald and Savin-Baden, *supra* n. 61, p. 2.

¹¹³See MacDonald and Savin-Baden, *supra* n. 61, p. 7. For a more detailed discussion of the importance of alignment in the context of assessment, see G. Brown, "Assessment: A Guide for Lecturers" (2001) No. 3 LTSN Generic Centre Assessment Series, pp. 4–6.

¹¹⁴See MacDonald and Savin-Baden, *supra* n. 61, p. 8.

¹¹⁵Garrett, *supra* n. 41.

issue identification. Such “double loop” learning encourages constant critical reflection on process and challenges students to frequently rethink the basis of their actions and decisions. As part of the PBL exercise students engaged in this process of reflection throughout the exercise through a reflective narrative.¹¹⁶

John Dewey believes that a student cannot be taught what he needs to know, but he can be coached to identify the taught processes to move from ignorance to understanding, to reflect on his own learning.¹¹⁷ Formalised reflection in the form of a narrative requires that students produce evidence of their reflection.¹¹⁸ It has been suggested that in PBL the assessment system should reflect the true nature of the subject and the abilities required in order to contextualise assessment and make it more naturalistic.¹¹⁹ Assessment is authentic when the task has a degree of “real-world” complexity, where the learning has value beyond the classroom and is personally meaningful to the learner.¹²⁰ Reflection is a central element of making assessment more authentic. The employment of reflective narratives in law emanates from clinical legal education where it draws on the literature of reflective practice,¹²¹ and such narratives are most often cited in legal education as tools that are useful in the development of academic and practical skills.¹²² Cowan notes that their scope can be quite broad, with reflection occurring whenever a student “analyse[s] or evaluate[s] one or more personal experiences and attempt[s] to generalise from that thinking”.¹²³ Maughan and Webb argue that reflective narratives can be used to encourage students to record reflection on specific skills, attributes or behaviours, practical legal knowledge and theories about the legal process.¹²⁴

Students were required to write a narrative about the role that they played in the process of solving the problem and were assessed according to the key criteria noted above. As PBL does not lend itself to prescriptive learning outcomes, it was not appropriate to have objective learning outcomes. As noted above, the exercise required that students looked initially at the problem, identified what the issues were, then looked to the various dispute resolution processes that could be employed, assess their suitability to resolve the dispute and discuss possible outcomes if each of the processes were employed. The reflective narrative provided students with the chance to reflect upon their individual involvement in the process and what they believed went well and what they would approach in a different way in future. It has been suggested that expressing such reflection can enhance understanding and

¹¹⁶Macfarlane and Manwaring, *supra* n. 55, p. 273.

¹¹⁷J. Dewey referred to in Bone and Hinett, *supra* n. 42.

¹¹⁸K. Hinett, “Developing Reflective Practice in Legal Education” (2002) UKCLE, p. 2, available at <http://www.ukcle.ac.uk/resources/personal-development-planning/reflection/> (accessed 1 October 2016).

¹¹⁹See Light and Cox, *supra* n. 52, p. 175. See also J. Cowan, *On Becoming an Innovative University Teacher: Reflection in Action* (Buckingham, Open University Press, 1999), p. 66. For an example of assessment methods in a problem-based literature course, see Ramsden, *supra* n. 48, pp. 197–198.

¹²⁰See J. Barell, *Developing More Curious Minds* (Virginia, ASCD, 2003), p. 144. See Varnava and Webb, *supra* n. 1, at p. 378.

¹²¹See Maughan and Webb (1996), as referred to in Varnava and Webb, *supra* n. 1, at p. 378.

¹²²See Varnava and Webb, *supra* n. 1, at p. 378. See also Macfarlane and Manwaring, *supra* n. 55, p. 273.

¹²³See Cowan, *supra* n. 119, p. 18, as referred to in Varnava and Webb, *supra* n. 1, at p. 378. For a discussion on the ethical issues involved in encouraging critical thinking, see C. Green and H. Klugg, “Teaching Critical Thinking and Writing through Debates: An Experimental Evaluation” (1990) 18(4) *Teaching Sociology* 462–471, p. 469.

¹²⁴See Maughan and Webb (1996) at p. 283, as referred to in Varnava and Webb, *supra* n. 1, at p. 379.

provide students with an opportunity to explore their own relationship with the law.¹²⁵

In light of the highly personalised nature of the learning involved, some commentators have suggested that there may be issues with the reliability of reflective narratives and that consequently it may be inappropriate that they be summatively assessed as this can distort the way they are used, with students being more conscious of the assessment context and wary of reporting their full experience or reflecting accurately their experience if they feel the comments are inappropriate or will not be valued in the formal assessment process. Hence, reflective narratives in the form of a written assignment comprised the formative aspect of the exercise, with students reflecting their personalised learning within the “affective domain”: the values, feelings and motivations that give authenticity to the assessment.¹²⁶ Experience suggests that a system of assessment such as this, which eliminates grade competition, should help to reduce resistance to PBL and encourage cooperation in learning. Indeed some authors have gone so far as to suggest that competitive grading is fundamentally at odds with core learning values.¹²⁷

In advance of submission, students were encouraged to be open and honest about their experience and were provided with the support and assistance to support their understanding and enhance their development. It is through formative assessment that students can disclose their shortcomings, identify learning needs and reflect on areas for further development without these being seen as personal shortcomings.¹²⁸

Written communication is an important skill for students to acquire, and written assignments in the form of reflective narratives provide students with an opportunity to practise this skill, particularly with a 2000-word formative assignment that requires succinct, critical pieces of work. Experience also suggests that when such writing is reflective, students tend to be more open and honest about their learning than one might expect.¹²⁹ This was certainly the experience of the author when reviewing the reflective narratives of participants.

Participant reflections

In terms of how students made a contribution to the group when identifying the issues in the dispute and the selection of the appropriate dispute resolution process, the general trend among students when they initially embarked upon the exercise, as

¹²⁵Flagg, *supra* n. 32, p. 154.

¹²⁶See Varnava and Webb, *supra* n. 1, at p. 379. There have also been calls for increased use of formative assessment in such contexts, see G. Gibbs and H. Dunbat-Goddet, “The Effects of Programme Assessment Environments on Student Learning” (2007) Oxford Learning Institute, UKCLE, p. 27, available at http://www.heacademy.ac.uk/resources/detail/teachingandresearch/the_effects_of_programme_assessment_environments_on_student_learning (accessed 1 October 2016).

¹²⁷See Flagg, *supra* n. 32, pp. 139 and 159.

¹²⁸P.T. Knight, “A Briefing on Key Concepts: Formative and Summative, Criterion and Norm Referenced Assessment”, No. 7 LTSN Generic Centre Assessment Series (2001), p. 10. For a discussion on the differences and similarities between formative and summative assessment, see R. East, “Formative v Summative Assessment”, UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/formative/> (accessed 1 October 2016). See also A. Bone, “Designing Student Learning by Promoting Formative Assessment” (2008) UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/formative-assessment/> (accessed 1 October 2016).

¹²⁹See MacDonald and Savin-Baden, *supra* n. 61, p. 12.

noted in their reflective narratives, was the difficulty in departing from the “traditional” litigation mindset in order to consider other settlement mechanisms such as mediation. During the first session the groups generally went through the following process as reflected in the following excerpt from one student’s narrative:

The group started brainstorming, where we exposed our findings. I personally noted that as a law student it was at first very difficult to depart from the “traditional” litigation mind set with for e.g. supportive case law and statutes etc. It took me some time to be able to consider other ways to “settle the dispute” by using other forms of dispute settlement mechanisms like mediation for instance. After brainstorming the issues we decided to tackle the question by ways of litigation, mediation and arbitration. Solving the problem via litigation was rather “generic” much like a problem question you’ll get in an exam or coursework, using cases and statutes to support our claims. Solving the problem by way of mediation and arbitration was very different from litigation. In order to solve the issue by means of ADR we decided to “role play” the proceedings. By role playing the proceeding instead of just writing it down like a traditional piece of work, it was much easier to proceed as it was like we were actually solving the problem in real life. One group member was the arbitrator/mediator, two other group members were the counsels and the remaining two were the plaintiff and defendant. The outcome of the problem question was different when we proceeded by using ADR compared to litigation, especially mediation where I noted that it was more like a “discussion” where both parties would tell their part of the story and the mediator would try to bring them to an agreement. The same goes for arbitration except that we kept in mind that the decision was binding therefore the casual discussion element was not present instead the counsels and the parties were a little bit more aggressive.

The groups generally moved from a litigation mindset towards ADR options. As one student remarked of her group:

As a team, we established that there were several ADR options that could be applied to the problem question. We took a hierarchical approach to the exercise, starting with Negotiation and ending with arbitration. The reasoning behind the hierarchical approach is that it would help in creating an orderly manner of assessing the most effective ADR method. It would also aid in outlining our research in a neat and clear fashion. We also considered that several ADR options could be used and did not necessarily have to reflect the hierarchical order we chose. We explored all other alternatives in between, which included conciliation, mediation, mini trial. As a team, we considered the possible phases of each possible ADR and considered the factors involved and the role of the third party. In the midst of our research we also uncovered some disadvantages to the various forms of ADR. However, it was easy to establish that these were significantly less than the disadvantages associated with litigation.

The groups appeared to be much more at ease and comfortable working together in the second session, by the time the additional information about the problem was introduced. This was the general trend in the narratives. As one student noted:

The group proceeded exactly the same way (we dealt with litigation, mediation and arbitration). I observed that everyone in the group was much more at ease during the second session and the flow of ideas, discussions and the way the role play was conducted was more fluid. The outcome of the problem was slightly different as everyone wanted to have their say and therefore I witnessed firm opposition from both parties on certain aspects of the proceeding especially when the mediator was trying to bring everyone to an agreement, like for e.g. on how much money had to be paid or the concessions one had to make.

In terms of the students’ assistance in determining what the outcome of that process may be once the process was selected, the conclusion of most students in their diaries tended to focus on their advice in describing the rationale of their preferred form of ADR

to resolve the dispute, in most cases mediation, over litigation. As one student remarked, demonstrating general thinking on this point within the class:

We preferred Mediation because it takes usually less time than arbitration or litigation and involves lower costs. Furthermore, the process enables parties to reach an agreement on solutions which could not be achieved through an adjudicative process such as arbitration or litigation and which would not therefore be available through the making of an arbitral award or a judicial decision. For example, the parties' preferred solution to a contractual dispute may be to renegotiate the terms of the contract. The renegotiation of a contract is possible in mediation, whereas it is not in arbitration or litigation.

With regard to the students' view of their contribution and critically, what have they learned from the process, including how they would approach a similar situation in future, the following excerpt from one of the student diaries reflects a common theme among students:

In my view, I made an adequate contribution to the group, particularly regarding the identification and discussion of legal points. The process has been enriching and enjoyable, enabling greater understanding of the dispute resolution processes and the development of skills which will definitely be helpful for a future career.

A similar situation could be approached using the methodology that was adopted in my group, that is an identification of the legal issues, followed by a discussion of the various dispute resolution processes and their suitability to the facts at hand so as to reach a sustained conclusion as to the most appropriate mechanism and the likely outcome.

The positive experience that students had with the PBL exercise, as reflected in the qualitative research discussed above, was also demonstrated in the narratives. As one student, reflecting the trend in the class remarked:

Apart from being an activity that I could use to boast about during a job interview or on my CV, these sessions were good exercises for me as a student, as I was able to have an insight of what ADR is in practice. Even though lectures provide a comprehensive explanation of the subject it does not provide students with the practical element which is of course very important for postgraduate degree holders who envisage becoming professionals.

There were also criticisms of the composition of two of the groups. A number of group members of these groups complained that some of the group members did not "pull their weight". As one student remarked:

I value each person's contribution, no matter how minimal. However, in the future I would suggest that the least active member be chosen as leader of the group. This would stimulate their researching and critical thinking skills, instead of relying on the research of others. In addition, I would have a "requirements" sheet that outlines what research needs to be conducted and which person will be allocated to this research.

As noted above, the primary motivation for adopting the PBL exercise is to assess the students' ability to perform in a professional context, to recognise their need to acquire new knowledge and skills and to see learning holistically rather than atomistically. The following excerpt from a seasoned student reflects that this is possible and also reveals the potential that PBL possesses as an educational tool:

It was a novel and enriching experience for me to be engaged in, first, in a discussion on a legal problem with people years younger to me, and secondly, to appreciate the depth of their reasoning. I see my contribution as very positive, so also was that of the other members. Each member of the group contributed in their own way to enrich the debates and reach a solution. It involves a host of skills, the most important being listening and understanding the

viewpoints of others. It also involves recognising alternative perspectives to a chosen one, readiness to compromise where the need arises. One should shun stubbornness.

The work has made me realise reflection on a legal problem required dispassionate involvement and discussion from what is being reflected on. It opened the way to dialogue and explore critically what I believed in and, in the process, reject the inconsistencies before reaching an informed collective decision. Above all, I'll remember the exercise as one that helps to hone skills like analysing, synthesizing, advocating, counselling, writing and speaking, negotiating – all so important to succeed in the legal profession.

Feedback is essential in order to motivate students, to inform them on how they have done and how they can improve.¹³⁰ Feedback was an essential aspect of the assessment, as this was a critical part of the reflective process and it was delivered in such a way that students could make sense of it and apply it in their learning and ultimately in their professional lives. While the PBL exercise was assessed by way of written formative assessment, in future this could be expanded to include other forms such as peer feedback, presentations and online journals.¹³¹

Conclusion

Aristotle believed that teaching is the highest form of understanding.¹³² The PBL approach adopted in the exercise discussed required that students construct and develop their own knowledge through researching and developing solutions to open-ended, real-life problems.¹³³ The feedback from students demonstrates the success of the approach. It was found that 96.43% of the class, all but one student, believed that the exercise helped them to develop their problem-solving skills and 92.86% of the class (26 students) said that they believed that the PBL exercise assisted them to develop their lawyering skills. All students believed the PBL exercise helped them to learn about and critically analyse the subject area and relate the theory they learned in class to practice. While the PBL approach involves a focus on learning strategy as well as knowledge acquisition, students still have the opportunity to acquire relevant knowledge by adopting the strategy to recognise what they already know, identify what they needed to know to tackle the issues or problem and then attain the information to address or ideally solve their problem.¹³⁴

¹³⁰See Brown, *supra* n. 113, pp. 17–19. Numerous audits reflect that students are generally unhappy with the feedback they receive, see for example A. Bone and Z. Swan, “The First Year Experience of Assessment – Realigning the Learning” (2010) UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/first-year-experience-of-assessment/> (accessed 1 October 2016). See also Martin, *supra* n. 55, pp. 59–60.

¹³¹See Hinett, *supra* n. 118, p. 43. For a comprehensive overview of various PBL assessment methods and their application in various fields, see MacDonald and Savin-Baden, *supra* n. 61, pp. 10–19. See also P. Wynell-Sutherland and E. Mytton, “Assessment in a Rapidly Changing World: Developing a New Discourse” (2011) UKCLE, available at <http://www.ukcle.ac.uk/resources/assessment-and-feedback/wynell-sutherland/> (accessed 1 October 2016). See also Nagarajan, *supra* n. 55, p. 19.

¹³²See E.L. Boyer, *Scholarship Reconsidered: Priorities of the Professoriate* (Princeton, NJ, The Carnegie Foundation for the Advancement of Teaching, 1997), referred to in K. Greaves, “Is Scholarship of Teaching and Learning in Practical Legal Training a Professional Responsibility?” (2015) 49(1) *Law Teacher* 22–38, p. 23.

¹³³T.J. Clouston, “Facilitating Tutorials in Problem-based Learning: Students’ Perspectives”, in P. Hartley, A. Woods and M. Pill (eds), *Enhancing Teaching in Higher Education: New Approaches for Improving Student Learning* (London, Taylor & Francis, 2005), p. 52, referred to in McCall, *supra* n. 29, p. 44.

¹³⁴M. Le Brun and R. Johnstone, *The Quiet (R)evolution – Improving Student Learning in Law* (Sydney, Law Book Company, 1994), p. 93, Kiley, Mullins, Peterson and Rogers, *supra* n. 29, p. 19, referred to in McCall, *supra* n. 29, pp. 44, 45.

The feedback received from the PBL exercise in both the questionnaires and the reflective narratives is generally positive, but the extent to which PBL exercises such as this are effective in enhancing the problem-solving skills of students will only be truly assessable with the passing of time and the graduation of the students involved from university to practice or industry.¹³⁵

Disclosure statement

No potential conflict of interest was reported by the author.

¹³⁵Hammond, *supra* n. 4 at p. 207.